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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 11.7.2007.

Waryam Singh son of Bhagwan Singh, Caste Saini,
resident of Village Bambeli, P.S.Mahilpur, Tehsil Garh Shankar,
District Hoshiarpur,

.... Appellant.

vs

The Bambeli Co-operative Agricultural Service Society, Bambeli,
P.S.Mahilpur, District Hoshiarpur, now amalgamated with
the Singhpur Agricultural Service Society (Principal) Limited
through its President.

.... Respondent.

Coram Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Sarwan Singh, Senior Advocate with
Mr.N.S.Rapri,Advocate,for the appellant.
None for the respondent.

R.S.Madan, J.

A suit for declaration was filed by the plaintiff-appellant alleging therein that the award dated 12.2.1975 was passed by the arbitrator without notice to him. The said suit was decreed by the trial court restraining the defendant- respondent society not to recover the amount awarded by the arbitrator. Aggrieved by the judgment and decree of the trial court, the respondent- Bambeli Co-operative Agricultural Service Society, Bambeli, filed an appeal before the learned Additional District Judge, who accepted the appeal by setting aside the judgment and decree of the trial court and upheld the award of the arbitrator. This order is under challenge in this regular second appeal.

Learned counsel for the appellant before addressing arguments on the appeal, proposed the following two substantial questions of law:-

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1. Whether the award of the arbitrator could be maintained without notice to the appellant?
2. Whether the appeal on behalf of the society has been filed by a duly authorised person?

I have heard the learned counsel for the appellant and have also gone through the records.

It is contended on behalf of the appellant that in para no.11 of the trial court judgment it has been categorically observed that no notice was ever given to the appellant either by the society before the reference was adjudicating upon or by the arbitrator before the passing of the award. It was due to non-compliance of principle of natural justice that the trial court decreed the suit of the plaintiff by restraining the defendant-respondent from making any recovery on the basis of award dated 12.2.1975.

Aggrieved against the judgment and decree of the learned trial court, the respondent-society filed an appeal before the learned District Judge, Hoshiarpur, wherein a preliminary objection was raised by the plaintiff that the appeal has not been filed by a duly authorised person as no resolution was passed in favour of Mangal Singh President of the society to present the appeal on behalf of the society. The learned Additional District Judge, however, while dealing with this question took into consideration the resolution dated 21.6.1978 vide which the President of the Society, Mangal Singh, was authorised to file proceedings in the civil court.

However, the appeal was filed on 28.10.1978 before the learned Additional District Judge, but no fresh resolution authorising the President of the society to file an appeal, was annexed with the appeal. Resolution

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dated 28.10.1978 only authorises the President to take up the civil court proceeding against the present appellant and not to file appeal. Filing of civil suit and appeal are two different footings. Admittedly, no separate resolution has been passed authorising Mangal Singh to file the appeal before the learned Additional District Judge against the judgment and decree of the trial court.

Since the appeal filed before the learned Additional District Judge, Hoshiarpur, was not filed by a duly authorised person, the judgment and decree dated 9.9.1980 passed by it is not sustainable in the eyes of law. Accordingly, the order dated 9.9.1980 passed by the learned Additional District Judge is set aside and the order of the learned trial court is restored. The recovery amount was already deposited by the plaintiff-appellant about 25 years ago which stood adjusted by the society in the recovery proceedings. It is made clear that the society will not ask for further recovery, if any, due towards the recovery proceedings from the appellant on the basis of award dated 12.2.1975. The appellant is, however, not entitled to any refund of the amount already deposited by him with the society because the amount stands adjusted.

In the result, this regular second appeal is disposed of on the terms indicated above.

11.7.2007. (R.S.Madan)
vs. Judge.